

APFeeWaived, APPEAL, DISMISSED

**U.S. Bankruptcy Court
California Northern Bankruptcy Court (San Jose)
Adversary Proceeding #: 21-05005**

Assigned to: Judge Stephen L. Johnson

Lead BK Case: 21-50146

Lead BK Title: Debbie Alice Thompson

Lead BK Chapter: 13

Demand:

Nature[s] of Suit: 71 Injunctive relief – reinstatement of
stay
91 Declaratory judgment

Date Filed: 02/25/21

Date Dismissed: 06/16/21

Plaintiff

Debbie Alice Thompson
18285 Constitution Avenue
Monte Sereno, CA 95030

represented by **Debbie Alice Thompson**
PRO SE

V.

Defendant

B & B Capital, LLC
1055 Parsippany Blvd., Ste. 200
Parsippany, NJ 07054

represented by **Bonni S. Mantovani**
Prober & Raphael, ALC
20750 Ventura Blvd. #100
Woodland Hills, CA 91364
(818) 227-0100
Email: bmantovani@pralc.com

Defendant

B & B Funding, LLC
1055 Parsippany Blvd., Ste. 200
Parsippany, NJ 07054

represented by **Bonni S. Mantovani**
(See above for address)

Defendant

Gulf Harbour Investmenrs Corp
111 North Orange Avenue, Ste 800
Orlando, FL 32801

represented by **Bonni S. Mantovani**
(See above for address)

Defendant

IRA F. Bailey, individual
1055 Parsippany Blvd., Ste. 200

represented by **Bonni S. Mantovani**
(See above for address)

Parsippany, NJ 07054

Defendant

Mortgag Lender Services Inc.
11707 Fair Oaks Blvd., Ste. 202
Fair Oaks, CA 95628

represented by **Bonni S. Mantovani**
(See above for address)

Defendant

PNC Bank, National Association
PO Box 5570
Cleveland, OH 44101

represented by **Jonathan Cahill**
Aldridge Pite, LLP
4375 Jutland Dr. #200
P.O. Box 17933
San Diego, CA 92177-0933
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Bonni S. Mantovani
(See above for address)

Filing Date	#	Docket Text
06/16/2021	<u>31</u>	Order Dismissing Adversary Proceeding (RE: related document(s) <u>16</u> Motion to Dismiss Adversary Proceeding filed by Defendant B & B Capital, LLC, Defendant B & B Funding, LLC, Defendant Gulf Harbour Investmenrs Corp, Defendant IRA F. Bailey, Defendant Mortgag Lender Services Inc., Defendant PNC Bank, National Association, <u>19</u> Motion to Dismiss Adversary Proceeding filed by Defendant PNC Bank, National Association). (al) (Entered: 06/17/2021)

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



The following constitutes the order of the Court.
Signed: June 16, 2021

Stephen Johnson

Stephen L. Johnson
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re **DEBBIE ALICE THOMPSON,**

Debtor.

DEBBIE ALICE THOMPSON,

Plaintiff,

v.

B&B CAPITAL, LLC. et al,

Defendants.

Case No. 21-50146 SLJ
Chapter 13

Adv. Proc. No. 21-5005

ORDER DISMISSING ADVERSARY PROCEEDING

Plaintiff Debbie Alice Thompson filed this adversary proceeding on February 25, 2021. **ECF 1**. But on April 26, 2021, I dismissed the underlying bankruptcy case with a two-year bar to refile. BK **ECF 76**. I concluded in that order that the sole purpose of that bankruptcy case, and others previous, was to litigate with the defendants in this adversary proceeding and delay foreclosure on real property she owns at 18285 Constitution Avenue, Monte Sereno, California. *Id.* at 6–7.

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The defendants in this case filed two motions to dismiss this adversary proceeding, ECF 16, 19. They assert a variety of reasons why the complaint fails to satisfy pleading standards or state a claim on which relief can be granted. Both parties contend that the adversary proceeding should be dismissed because the underlying bankruptcy case has been dismissed, relying on *In re Carraber*, 971 F.2d 327, 328 (9th Cir. 1992).

Plaintiff debtor clarified at oral argument that the document she filed at ECF 24, which appears to be an opposition to the motions to dismiss, is in fact an amended complaint. She argues that she was authorized to file that document under Bankruptcy Rule 7012. Her amended complaint alleges, in summary, that the parties who claimed to have lent money to her and taken security interests in her property should not be entitled to enforce those obligations because they failed to notify her of transfers of the relevant loans, cannot prove an entitlement to payment, and have made false claims. Because I conclude I lack jurisdiction, I will dismiss the case on that basis and will not decide the other matters asserted by the movants.

As noted, the case underlying this adversary proceeding was dismissed. Given that, I need to consider whether I should retain jurisdiction over this lawsuit. The Ninth Circuit held in *In re Carraber*, 971 F.2d at 328 that bankruptcy courts “are not automatically divested of jurisdiction over related cases when the underlying bankruptcy case is dismissed.” The case instructs that in deciding whether to retain jurisdiction over a related adversary proceeding after the underlying bankruptcy is dismissed, courts “must consider economy, convenience, fairness and comity[.]” *Id.* (citing *Carnegie-Mellon Univ. v. Cobill*, 484 U.S. 343, 353 (1988)). Applying these factors, I conclude I should decline to retain jurisdiction over this adversary proceeding and dismiss it.

Starting with judicial economy, in *In re Casamont Investors, Limited*, 196 B.R. 517, 524 (9th Cir. 1996), the BAP held that a bankruptcy court abused its discretion by retaining jurisdiction over an adversary proceeding that “the court had played no role in[.]” Plaintiff filed this adversary proceeding on February 25, 2021. Since then, two defendants filed

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1 motions to dismiss the complaint, **ECF 16, 19**, and Plaintiff filed responses to those
 2 motions, **ECF 24, 27, 29**, one of which appears an attempt to amend the original complaint,
 3 *see* **ECF 24**. But while the parties have done some work on this adversary proceeding, I have
 4 not. Judicial economy would be damaged by retaining jurisdiction here, so I will not.

5 Turning to convenience, as in *Casamont*, I find it would not be unduly inconvenient
 6 for Plaintiff to refile her complaint in State court. And the defendants who have moved to
 7 dismiss the complaint could just as easily do so in the State court, should Plaintiff refile. This
 8 factor favors dismissing this adversary proceeding.

9 Fairness shakes out similarly here. Nothing in the record shows me that the parties
 10 have done significant work on this case, so I see little prejudice in the parties potentially
 11 having to start over in State court.

12 Finally, comity favors declining jurisdiction as well. Plaintiff's complaint pleads a
 13 declaratory relief claim and a fraudulent conveyance claim; these both appear to be State law
 14 claims, and comity with State courts means "[n]eedless decisions of state law by federal
 15 courts should be avoided[.]" *Casamont*, **196 B.R. at 524** (citation omitted). **ECF 24** is said to
 16 be an amended complaint, and it appears to plead new federal causes of action. *See* **ECF 24**.
 17 Assuming that is what Plaintiff meant, the effort was untimely under Civil Rule 15(a)(1)(B),
 18 as it was filed more than 21 days after Defendant B&B Capital, LLC filed its motion to
 19 dismiss. *See* **ECF 16, 24**. And while I can grant leave to amend the complaint outside of that
 20 deadline under Civil Rule 15(a)(2), Plaintiff provides no argument why I should grant such
 21 relief in any of her filings.

22 Even if I were to grant that relief and view Plaintiff's amended complaint as the
 23 operative pleading here, I would still find that comity favors declining jurisdiction. Plaintiff
 24 brings one claim under **15 U.S.C. § 1641**. And 15 U.S.C. 1640(e) states actions under that
 25 part – thus including **15 U.S.C. § 1641** claims – “may be brought in any United States district
 26 court, or in any other court of competent jurisdiction[.]” This means federal courts do not
 27 have exclusive jurisdiction over Plaintiff's **15 U.S.C. § 1641** claim. Since nothing in the
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record shows that Plaintiff's claims are so complex that a State court could not adjudicate them, the existence of concurrent jurisdiction over this claim persuades me comity favors allowing a State court to decide this claim. As for Plaintiff 18 U.S.C. § 152 claim: "There is no specific provision under 18 U.S.C. § 152 for private civil damage suits or injunctive relief, and I do not find any cases suggesting that a private right to sue—as distinct from a defense where applicable or an argument in an otherwise pending case asserting unenforceability of an invalid act or document—may or should be implied for a debtor in an adversary proceeding under the Bankruptcy Code based on 18 U.S.C. § 152." *In re Terio*, 158 B.R. 907, 911–12 (S.D.N.Y. 1993) (citation omitted), *aff'd*, 25 F.3d 397 (2d Cir. 1994). Since "there is no basis for inferring that 18 U.S.C. § 152 authorizes—or the Bankruptcy Code would permit—a debtor to supplement the comprehensive and detailed civil remedies already available through the Code by asserting such claims as a separate basis for seeking relief in an adversary proceeding[.]" Plaintiff's has no standing to assert such a claim, and it cannot support a finding that comity favors my retaining jurisdiction over it. *Terio*, 158 B.R. at 912.

All of the *Carruher* factors favor declining to retain jurisdiction here. Accordingly, it is hereby ordered that this adversary proceeding be dismissed.

IT IS SO ORDERED.

END OF ORDER

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COURT SERVICE LIST

U.S. Mail:
Debbie Alice Thompson
18285 Constitution Avenue
Monte Sereno, CA 95030
[ECF recipients]

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Notice Recipients

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User: admin

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Case: 21-05005

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Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla Debbie Alice Thompson 18285 Constitution Avenue Monte Sereno, CA 95030

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